

Rte: 29 Advance Detour

Project: 0066-076-987,C501

Advance Detour Project

Rte. 66/29 Interchange Reconstruction

Norfolk Southern Railway

Right of Way and Track

Mileposts B-8.1 thru B-8.8

DOT 714-361D, 714-363S, 714-364Y

Gainesville, Prince William County, VA

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Gainesville, Prince William County, VA

THIS AGREEMENT, made and executed in duplicate as of the

29th day of SEPTEMBER 2009, between the
COMMONWEALTH OF VIRGINIA, acting by and through the Chief Engineer of the
Department of Transportation, hereinafter called "State", and the NORFOLK
SOUTHERN RAILWAY COMPANY, a Virginia corporation, hereinafter called "Railway".

WITNESSETH THAT:

WHEREAS, State proposes to construct an advance detour roadway facility and
adjust certain Public Utilities for a portion of existing Route 29 at Gainesville in the
County of Prince William, Virginia, which crosses Railway's main line right of way and
track at grade at Railway's approximate Milepost B-8.45 (DOT 714-363S); and

WHEREAS, Title I, United States Code "Transportation Equity Act for the 21st
Century" including amendments and revisions thereof has become effective in providing
part of the funds for the construction of the Project such as contemplated herein; and

WHEREAS, it is desired by the parties hereto to carry out and accomplish the
said construction and the work appurtenant thereto, and to determine and agree upon
the manner of performing said work; the portion of it to be done by the parties hereto;
the proportion of costs and expenses to be paid by each of said parties; and the mode
and time of payment therefore.

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed between the parties hereto as follows:

§ 1. The plans and specifications for this Project are identified as follows:

- A. Commonwealth of Virginia, Department of Transportation plans for Route 29 Advance Detour, said Project 0066-076-987, C501 and the current road and bridge specifications and special provisions of the Department of Transportation.
- B. Railway's plan number N/A dated N/A and any additional plans that may be required for changes in its facilities.
- C. Before this Agreement shall be in force and effect, the foregoing plans shall meet the approval in writing by the parties hereto and upon such approval shall become a part of this Agreement by reference.

§ 2. The work to be done under this Agreement consists of the construction of an advance detour roadway facility and adjust certain Public Utilities for a portion of existing Route 29 which crosses Railway's main line right of way and track at grade at Railway's approximate Milepost B-8.45 (DOT 714-363S), necessary drainage improvements including the bore and jack installation of new roadway storm drain pipes at Railway's approximate Milepost B-8.5, adjustment of Public Utilities at Railway's approximate Milepost B-8.77, the work appurtenant thereto, the acquisition of rights of way therefore and the adjustments to Railway's facilities required thereby. The work herein described is hereinafter referred to

as the "Project" and the costs and expenses in connection with said work are hereinafter referred to as "Project Expense."

§ 3. Responsibility for the several necessary items of work shall be as follows:

A. State shall perform or cause to be performed at Project Expense the following work:

- (1) Grading, drainage and pavement for the construction of the advance detour roadway of Route 29 at Railway's approximate Milepost B-8.45 (DOT 714-363S), as shown on the plans described in § 1.
- (2) Install by the bore and jack method a double line of sixty inch (60") corrugated steel drainage pipes within a double line of seventy-two inch (72") smooth wall steel pipes at approximate Railway Milepost B-8.5, said pipe to conform to Railway's prescribed Guidelines for under track culverts installed by the bore and jack method.
- (3) Install by the bore and jack method a twenty-four inch (24") public water main within a thirty-six inch (36") steel casing pipe at approximate Railway Milepost B-8.77, said pipe to conform to Railway's prescribed Guidelines for under track culverts installed by the bore and jack method, said public water main to be in accordance with provisions of separate Railway Utility Permit, referred to as NS Activity #1118334 by reference hereby.
- (4) Install by the bore and jack method six inch (6") and ten inch (10") public sanitary sewer pipes, both within a thirty inch (30") steel

casing pipe at approximate Railway Milepost B-8.77, said pipe to conform to Railway's prescribed Guidelines for under track culverts installed by the bore and jack method, said public sanitary sewer pipes to be in accordance with provisions of separate Railway Utility Permit, referred to as NS Activity #1118326 by reference hereby.

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- (5) The necessary precautions to prevent slope erosion along Railway's right of way and track and to minimize silt fouling Railway's roadbed and ditches.
 - (6) The adjustment, relocation, replacement or improvement of certain utilities, which shall be required to construct this project, as shown on the plans described in §1. Said adjustment, relocation, replacement or improvement of said utilities shall be in accordance with Railway's applicable standards, specifications, and permits as is typically required of said utilities occupying Railway Right of Way.

B. Railway shall perform or cause to be performed at Project Expense the following work:

- (1) Temporary or permanent changes in Railway's communication and signal lines and facilities, as may be appropriate.
- (2) Furnish such flagman and watchman service as may be necessary in connection with work performed by Railway's forces and the State or State's agent or contractor.

(3) Furnish an estimate for the aforementioned work, said estimate in the amount of \$137,974⁰⁰ shall meet the approval of State, and upon such approval, shall become a part of this Agreement, attached hereto.

C. Public and/or Privately owned utilities including water, power, telephone, light, gas or sewer lines or any other utilities conflicting with the construction of this Project shall be removed, replaced, or relocated at no expense to Railway.

§ 4. Any work necessary in connection with the Project, which is not specifically provided for in § 3, or its subsections, shall be done at Project Expense by one of the parties hereto as may be mutually agreed upon by said parties. All work shall be done in accordance with the plans and specifications referred to in § 1 hereof, together with such other plans and specifications that may be agreed upon by the said parties to carry out the work fully in accordance with the intent of this Agreement and in accordance with good engineering practices. If the parties are unable to agree, the issue or issues will be resolved in accordance with the applicable laws of the United States and the Commonwealth of Virginia.

§ 5. The following temporary construction clearances will be permitted by Railway.

Horizontal – 15.0 feet measured at right angles from the centerline of the nearest track.

Vertical – 23.0 feet measured above the top of the highest rail of Railway's track.

Should temporary clearances less than those specified herein be required during construction, the State shall notify the Railway's Division Engineer, or his authorized representative, a minimum of 72 hours in advance of same, providing him with details for the work which will require such reduced clearances, and State and its contractor shall abide by his instructions for performance of such work. It is understood and agreed that nothing herein contained shall be construed as granting to State or its contractor authority for clearances contrary to any applicable law or regulation.

§ 6. State shall have general charge of engineering on the Project, but Railway shall provide, at Project Expense, such engineering services as may be necessary in connection with the work to be performed by Railway. Railway may also provide, at Project Expense, an inspector to protect its interest in the work to be done on Railway's property and/or facilities by State's forces or contractor as may be deemed necessary by Railway's Chief Engineer.

§ 7. The State shall have general charge of the acquisition of all property or property rights required for the Project, whether purchased or appropriated, and the cost shall be charged to Project Expense. If any additional rights of way are required outside of Railway's property, State shall acquire same at Project Expense. Railway, to the extent that its present right, title and interest permits or enables it to do so and without warranty, hereby grants to State an easement to construct, operate, maintain and reconstruct said new roadway storm drain pipes, ditches and necessary drainage appurtenances across the right of way and under the

tracks of Railway at the locations shown on the plans referred to in § 1 hereof; provided however, that:

- A. Such easement hereby granted is limited to the use for highway purposes of space required for said new roadway storm drain pipes, ditches and necessary drainage appurtenances, together with the use of reasonable additional space for construction and for access to the highway facilities for maintenance purposes; it being understood that the easement shall not restrict the Railway from utilizing the easement for railroad operations and for wire lines or other facilities which will not encroach on the reasonable requirements for maintaining the highway facilities. All other rights are reserved unto the Railway.
- B. State, in its maintenance of the highway facilities, agrees to obtain written permission from the Railway before undertaking any work which may interfere with or be a real or potential hazard to passage of trains or other railroad operations and agrees to bear all expense for flagman or watchman services which the Railway may deem necessary because of its operations.
- C. Legal title and ownership in any structure (exclusive of public utilities) included in this Project erected by State on this easement is in State.
- D. All rights herein granted by Railway to State shall not be construed in any way whatsoever as being for the benefit of State's contractor or any others not a party to this Agreement.

- E. Such easements for public utilities to be constructed at Project Expense in accordance with the plans described in §1 and described in §3.A.(3) and §3.A.(4) hereof, said public utilities will be located within separate easements as agreed to in separate Railway Utility Permits, referred to as NS Activity #1118334 and as NS Activity #1118326 respectively by reference hereby.

§ 8. State shall require its contractor:

- A. To use all reasonable care and diligence in the performance of the work and cooperate fully with Railway's officials in order to avoid accidents, damage or unnecessary delay to or interference with trains on Railway's tracks.
- B. To consult with Railway's Division Engineer or his duly authorized representative before beginning any work on Railway's right of way and abide by his instructions insofar as the safety of Railway operations is concerned.
- C. Not to perform any work over or within, or to place or permit the placing of any machinery, equipment, material or other debris within 15.0 feet from the centerline of Railway's track, without first obtaining authority therefore from Railway's Division Engineer or his duly authorized representative.
- D. Before commencing work on Railway's property, submit to State for obtaining approval of Railway, his design and method for performing any work on Railway's right of way, including plans and specifications for equipment and procedures in preparation for any bore and jack storm

drain pipe installations, as well as plans and specifications for shoring and sheeting for excavations adjacent to the tracks. Shoring and sheeting design must have PE stamp affixed. State shall review said plans and submittals and if found in substantial conformance with provisions of his contract with the State, shall forward same to Railway for review and approval. It is understood and agreed to by the parties hereto that approval of said designs and methods by Railway shall not in any way relieve the State or its contractor of the obligations, responsibilities and liabilities imposed upon them by the provisions of this Agreement.

- E. To notify Railway's Division Engineer or his duly authorized representative in writing of the need for flagman or watchman services as determined by the Railway in accordance with § 8B, such notice shall be received by the appropriate Railway official a minimum of 30 days in advance of this need.
- F. To notify Railway's Division Engineer or his duly authorized representative in writing when, such flagman or watchman services shall be terminated subject to Railway's concurrence.
- G. To reimburse Railway for all actual loss and expense incurred or suffered by Railway by reason of any substandard clearances erected on this Project by the contractor.
- H. To reimburse Railway for all actual loss and expense incurred or suffered by Railway in the event Railway must detour trains by reason of contractor blocking Railway's tracks.

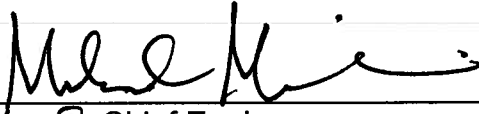
- § 9. State shall require its contractor, before commencing work of constructing said Project within Railway's right of way, to furnish evidence acceptable to Railway that the contractor has provided worker's compensation coverage as required by the Statutes of Virginia, automobile liability insurance, and Contractor's Public Liability and Property Damage Insurance generally required of its contractor by State on such projects, and submit to Railway for review and approval a Railroad Protective Liability Policy for personal injury and property damage, all with limits of liability as set forth in the Contractor Proposal. Said Railroad Protective Liability Policy shall be in the name of Railway and same shall be prepared in accordance with the Standard Provisions for General Liability Policies, Railroad Protective Liability Form for State Highway Projects.
- § 10. After completion of the work, said Route 29 Advance Detour, including all highway drainage and appurtenances, shall be maintained by the State as a part of the State's System of Primary Roads in accordance with §56-368.1 of the Code of Virginia (1950), as amended. Public utilities constructed at Project Expense in accordance with the plans described in §1 and described in §3.A.(3) and §3.A.(4) hereof, shall be maintained by the owners and operators of said public utilities as agreed to in separate Railway Utility Permits, referred to as NS Activity #1118334 and as NS Activity #1118326 respectively by reference hereby.
- § 11. In accordance with the Federal-Aid Policy Guide, Section 646.210, and revisions and supplements thereto, this project is not deemed to be of any benefit to Railway and therefore no participation shall be required of Railway to Project

Expense. It is understood that the construction of the Project, as herein contemplated, is to be financed from funds provided by the Federal Government and State and expended under State and Federal regulations. All plans, specifications, estimates of costs, awards of contract, acceptance of work and procedures in general are subject at all times to Federal and State laws, rules and regulations, orders and approvals applicable to State projects of the character herein contemplated. Railway shall render its bills to State for actual costs and expenses incurred by it on account of the Project in accordance with State's standard accounting procedures (i.e., Federal Aid Policy Guide, Part 140, Subpart I, of the Federal Highway Administration and revisions and supplements thereto). Any items paid Railway throughout the progress of the Project by State and not found to be in accordance with said regulations by State in their final audit shall be promptly refunded State by Railway upon submission of the items so disapproved. The State shall not be liable for payment of any bill received more than 12 months after all work on the Project is completed and the Project has been accepted by the Railway and State, unless the Railway has requested an extension of the billing period in writing.

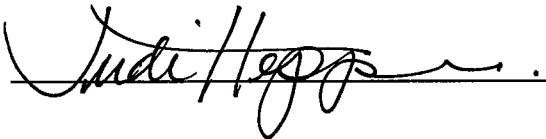
§ 12. This Agreement when properly executed shall be binding upon the parties hereto and their respective successors and assigns.

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, all as of the day, month and year herein above first written.

COMMONWEALTH OF VIRGINIA
Department of Transportation

By 
for Chief Engineer

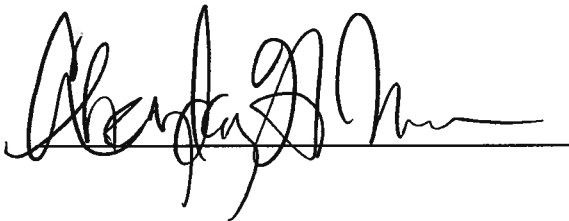
WITNESS:



NORFOLK SOUTHERN RAILWAY COMPANY

By 
General Manager

WITNESS:



FORCE ACCOUNT ESTIMATE

Work to be Performed By:	Norfolk Southern Railway Company
For the Account of:	Virginia Department of Transportation
Project Description:	Advanced Detour & Drainage Work for Rt.29 Adjacent to NS
Location:	Gainesville, VA
Project No.:	0066-076-987
Milepost:	B-8.1 to B-8.8
Date:	September 21, 2009
File:	ROW0122409

SUMMARY

ITEM A - Preliminary Engineering	8,825
ITEM B - Construction Engineering	31,149
ITEM C - Administration	2,000
ITEM D - Flagging Services	96,000
ITEM E - Communications Changes	0
ITEM F - Signal & Electrical Changes	0
ITEM G - Track Work	0
GRAND TOTAL	\$ 137,974

ITEM A - Preliminary Engineering

(Review plans and special provisions,
prepare estimates, etc.)

Labor:	20 Hours @ \$100 / hour=	2,000
Travel Expenses:		500
Services by Contract Engineer		6,325
NET TOTAL - ITEM A		\$ 8,825

ITEM B - Construction Engineering

(Coordinate Railway construction activities,
review contractor submittals, etc.)

Labor:	40 Hours @ \$100 / hour=	4,000
Travel Expenses:		500
Services by Contract Engineer		26,649
NET TOTAL - ITEM B		\$ 31,149

ITEM C - Administration

Agreement Drafting and/or Review		1,000
Prepare Billing	20 Hours @ \$50 / hour=	1,000
NET TOTAL - ITEM C		\$ 2,000

ITEM D - Flagging Services

(During construction adjacent to,
over or under track.)

Labor:	Flagging Foreman	
	120 days @ 700.00 per day=	84,000
	(based on working 10 hours/day)	
Travel Expenses, Meals & Lodging:		
	120 days @ \$100/day=	12,000
NET TOTAL - ITEM D		\$ 96,000

ITEM E - Communications Changes

Material:	0
Labor:	0
Equipment:	0
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NET TOTAL - ITEM E	\$ -

ITEM F - Signal & Electrical Changes

Material:	0
Labor:	0
Equipment:	0
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NET TOTAL - ITEM F	\$ -
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ITEM G - Track Work

Material:	0
Labor:	0
Equipment:	0
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NET TOTAL - ITEM G	\$ -
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NOTES

1. For all groups of CONTRACT employees, the composite labor surcharge rate used in this estimate (excluding insurance) is 176.90%. Self Insurance - Public Liability Property Damage is estimated at 16.00%. Work will be billed at actual current audited rate in effect at the time the services are performed.
2. For all groups of NON-CONTRACT employees, the composite labor surcharge rate used in this estimate (excluding insurance is 73.82%. Self Insurance - Public Liability Property Damage is estimated at 16.00%. Work will be billed at actual current audited rate in effect at the time the services are performed.
3. All applicable salvage items due the Department will be made available to it at the jobsite for its disposal.
4. The Force Account Estimate is valid for one (1) year after the date of the estimate (09/21/2009). If the work is not performed within this time frame the Railway may revise the estimate to (1) include work not previously indicated as necessary and (2) reflect changes in cost to perform the force account work.